

Arkansas State Board of Embalmers and Funeral Directors
Board Meeting

MINUTES
Thursday, July 10, 2014, 9:00am
101 East Capitol, Conference Room C
Little Rock, AR

Chairman James Terry Woodard called the meeting to order. Members present were: Vice Chairman Bobby Thurman, Bobby Burns, Jerry Adams, Patricia Roberts, and Ben Brazzel. Staff that were present: Amy Goode, Executive Secretary, Leslie Stokes, Inspector, and Mark Ohrenberger, Board Counsel.

1. Introduction of the Board

2. Oral Examinations

- a. **Robert Glenn Avery, Jr.** was administered his oral exam.

3. Hearings

- a. ***In the matter of: Billy Reddick and Reddick Funeral Home, a Licensed Funeral Director and Funeral Establishment***

Assistant Attorney General Peggy Johnson served as Hearing Officer and swore in witnesses.

Assistant Attorney General Mark Ohrenberger represented the Board.

Attorney Rickey Hicks represented Mr. Billy Reddick and Reddick Funeral Home.

Amy Goode – Executive Secretary witness for the Board.

James Johnson – complainant witness for the Board.

Court Reporter – Ms. Tiffanie Harrison, CCR

Ms. Johnson swore in the witness's for the record.

Hearing officer Peggy Johnson called the hearing on the record. Ms. Johnson stated for the record that this hearing would be conducted pursuant to the Arkansas Administrative Procedures Act. The strict rules of introducing evidence do not apply and will give latitude in presenting testimony and evidence. This hearing is subject to the Freedom of Information Act and is open to the public. Johnson allowed Mr. Ohrenberger Board's exhibit 1 -5. Exhibit 1 consists of 13 pages, exhibit 2 consists of 2 pages, exhibit 3 consists of 9 pages, exhibit 4 consists of 4 pages, and exhibit 1 consists of 1 page. Mr. Hicks had no objection to the exhibits being entered. Respondent exhibit 1 was entered into the record.

Mr. Ohrenberger opened that Mr. Reddick may be someone that you will recognize he was here for a hearing a few months back and also Mr. James Johnson who was the complainant in both cases. The first case is what brings us here today for the second case. The charges before the Board today is that Mr. Reddick in the last hearing was in violation of A. C. A. §17-29-311 (a) (2). That provision of the statute specifically provides that the Board can take action against a licensee for quote "misrepresentations made or fraud committed as a holder of a license." So the charge we have here today is two factual matters. That Mr. Reddick made misrepresentation to this Board in his capacity as a funeral director in the hearing that you heard in January 2014. Ohrenberger asked the members of the Board to turn to page 4 of exhibit 1, specifically paragraph 19 and 20 you have the two specific areas where Mr. Reddick is being charged with making misrepresentation and untruthful statements in the first hearing. First are in his statements concerning the judge's dismissal of the small claims action. Testimony you will hear and evidence

you will receive particularly exhibit 4 which is the portion of the transcript in response to questions from Board member Bobby Burns. Mr. Reddick made statements that he (meaning the judge) could not determine whose signature was a real signature so the matter was dismissed from small claims court. In paragraph 20, the statements respondent made to filing an appeal were untruthful and/or misrepresentation. Also in exhibit 3 you will see that Mr. Reddick made statements that the district court appeal of his lawsuit against Mr. Johnson had been appealed. You will also see evidence that no such appeal had been taken specifically as of the date of the last hearing.

Mr. Hicks opened that Mr. Ohrenberger has correctly stated the reasons for the hearing today. The issue before this Board is whether or not Mr. Reddick intentionally misrepresented some of the facts in his previous testimony before this Board. Mr. Hicks stated that he believes the evidence will show today that what Mr. Reddick said was simply innocent mistakes. He has been practicing law for twenty-six years and when a person walks out of a court room their recollection of what happened in the court room is entirely different to that of the lawyer. They often don't understand verdicts and dismissals, etc. He believes Mr. Reddick made some honest mistakes when he mentioned his reasons for why the judge dismissed the previous case in municipal court. It's very reasonable that individuals listen to same set of facts and misinterpret their meaning. In terms of the appeal itself he can certainly understand why Mr. Reddick would have thought why the appeal was being taken. In late December or early January, Mr. Hicks bumped into Mr. Reddick at a church function and during that time he had a case from the municipal court he wanted to appeal. He didn't mention who the defendant was or what the case was about, but he simply filed a lot of claims in small claims court and asked Mr. Hicks to file an appeal. They did not agree on a price or any specifics, but he did tell him he would file an appeal. There was not any reason for Mr. Reddick not believe that he was filing the appeal, since he has done work for Mr. Reddick on several occasions. The next thing he had heard about this was after the hearing and the tone of his conversation he thought the appeal had been done, because inquired how the appeal was going. Mr. Hicks informed Mr. Reddick that the appeal had not been filed, because he never received any specifics on the appeal. Therefore the appeal had not been taken. It is very reasonable for lay people not to know how an appeal is done, not to know the procedure, not to know the time starts not from the hearing date, but from when order is actually filed. It's very reasonable for him to conclude that Mr. Hicks had received all the documents necessary to file the appeal. Does not believe that Mr. Reddick intentionally lied or misrepresented any of the facts in this case, but that simply he represented as saw them and thought of them.

Motion made by Burns to find factual allegations 1-22 to be found true, seconded by Roberts, all in favor. Motion carried.

FINDINGS OF FACT

1. Respondent Reddick Funeral Home is currently licensed as a Funeral Establishment Type A in the State of Arkansas. Respondent was so licensed at all times relevant to the matters addressed herein.
2. Respondent Billy Reddick is currently licensed as a Funeral Director in the State of Arkansas. Respondent was so licensed at all-time relevant to the matters addressed herein.
3. On September 23, 2013, the Board received a complaint from James Johnson.
4. In that complaint, Mr. Johnson alleged that, on July 16, 2012, he met with Billy Reddick, owner of Reddick Funeral Home, to make arrangements for his deceased aunt, Virgie Lee Leake. Ms. Leake had funds totaling \$4,697.65 to pay for funeral services.
5. The complaint further stated that, during his meeting with Mr. Reddick, Mr. Johnson selected a casket and was told that the casket and all funeral services would not exceed the available funds (\$4,697.65).
6. Mr. Johnson was not provided a statement of funeral goods and services selected.
7. The services were held on July 23, 2012.
8. Mr. Johnson had no further contract with either Respondent until January or February 2013 when Respondent requested that Mr. Johnson pay the balance due on Ms. Leake's funeral.
9. On February 8, 2013, Mr. Johnson went to Reddick Funeral home to request records regarding Ms. Leake's funeral arrangements. He was provided an unsigned funeral contract. The unsigned contract is inconsistent with the arrangements Mr. Johnson made with Mr. Reddick on July 18, 2012 and does not reflect all of the payments made to Reddick Funeral Home.
10. According to that contract, the remaining balance owed for Ms. Leake's funeral is \$1,835.05.

11. On September 10, 2013, Respondent initiated a small claims action against Mr. Johnson for the unpaid funeral bill in the principal amount of \$1,560.85.

12. Mr. Johnson prevailed in that action and Respondent's complaint was dismissed with prejudice.

13. The Board found the above complaint allegations substantiated based upon the evidence and testimony presented at a hearing before the Board on January 16, 2014.

14. Additionally, at January 16, 2014 hearing, evidence was presented showing that, during the small claims court proceedings, Respondent presented a statement of goods and funeral services signed by Complainant, James Johnson. At the hearing before this Board, Respondent also presented a receipt demonstrating that, following his February 2013 contact with Mr. Johnson, Mr. Johnson made payments on the Leake's account.

15. Mr. Johnson (Complainant) maintained that the signed statement of funeral goods and services was a forgery. He also maintained that the receipt was manufactured to support Respondent's untruthful testimony that Complainant had agreed to make further payments on the Leake's account.

16. In presenting his defense to the complaint, Respondent testified under oath to the Board that, the small claims action he filed against complainant was dismissed because the presiding judge was unable to make a determination concerning the issue of forged signatures.

17. Respondent also testified under oath to the Board he had already filed an appeal of the court's decision, representing to the Board that the matter of forged signatures was yet unsettled.

18. On January 17, 2014, the day following the hearing held before this Board, the Ouachita County Circuit Court certified that no appeal from case # SC-1380 had been filed. Case # SC-1380 is Respondent's small claims action against Complainant.

19. Respondent's statements concerning the judge's dismissal of the small claims action were untruthful and/or misrepresentations.

20. Respondent's statements concerning appealing the small claims action were untruthful and/or misrepresentations.

21. Respondent willful misrepresentations and/ or untruthful assertions influenced this Board's decision concerning the January 16, 2014 hearing.

22. The State Board of Embalmers and Funeral Directors may issue letters of reprimand or caution, refuse to issue or renew a license, suspend or revoke any license for the practice of embalming or funeral directing, or may place the holder thereof on a term of probation after proper hearing upon finding the holder of the license to be guilty of acts or omission as set forth in Arkansas Code Annotated § 17-29-311 and its Rules and Regulations.

Motion made by Thurman to find charge C.1 true, seconded by Roberts, all in favor. Motion carried.

CONCLUSIONS OF LAW

C.1 Respondent violated this Board's Statutes and/or Rules and Regulations as set forth in Arkansas Code Annotated § 17-29-311 (a)(2), which includes "Misrepresentations made or fraud committed as a holder of a license," when Respondent misrepresented and/or gave untruthful testimony at the January 16, 2014 hearing.

Motion made by Thurman is that the funeral director license of Mr. Billy Reddick and the establishment license for Reddick Funeral Home shall both be placed on probation for a period of six months. If there shall be a subsequent hearing or matter before this Board then the Board will consider a more severe penalty. Seconded by Roberts, Adams voted no, motion carried 4-1.

ORDER

In light of the violation found in this order, the Board orders that the funeral director license of Respondent Billy Reddick and the funeral establishment license of Respondent Reddick Funeral Home shall both be placed on probation for a period of six months. If, upon subsequent hearing, the Board finds that either Respondent engages in conduct in violation of the Board's rules or of the statutes under this Board's jurisdiction during the probation period, the Board will penalize that Respondent more severely.

4. Administrative

- a. Motion made by Brazzel to accept as written the minutes of the May 14, 2014 and June 26, 2014 Board meeting, seconded by Adams. All in favor, motion carried.
- b. Motion made by Brazzel to approve minutes of the public hearings held on June 25, 2014, seconded by Adams, all in favor. Motion carried. Thurman and Roberts abstained.

- c. Motion made by Burns to accept and approve the May - June 2014 trial balance and DF&A documents as delivered, seconded by Brazzel. All in favor, motion carried.

5. Complaints

- a. **Case #14-6 Campbell, Bruce V. Brown Funeral Home, Billy Hankins** – Mr. Ohrenberger stated that as he sees the matter Mr. Campbell is complaining that he was led to believe by the funeral director Mr. Hankins that the pre-need policies his family member had were going to take care of the funeral bill 100% and that he was not given a statement of funeral goods and services on the day of the arrangements. However, when he showed up the next morning for the service Mr. Hankins handed him some documents which included the invoice for an extra \$250 or so. Mr. Hankins explained that the \$200 was for the opening and closing the grave; the remainder of that was for the extra copies of the death certificates Mr. Campbell had requested. There was some dispute over that amount whether it was owed. Ultimately, Mr. Hankins agreed that he was mistaken for the \$200 additional fee for the opening and closing of the grave. Mr. Hankins did send a refund for that amount to Mr. Campbell. There was still a disagreement on the additional amount charged for the death certificates. Mr. Hankins response is that the extra death certificates were over and above what would have normally been included, because they were extra and he had to pay for them. Mr. Hankins never promised Mr. Campbell that he would not be charged. Mr. Campbell's contention is that was never explained to him. Mr. Ohrenberger stated there was two issues here for the Board to consider; whether or not they need to be pursued further in terms of a hearing or attempt to resolve through a consent order. The billing dispute is just that a dispute between the two parties. First issue is whether Mr. Hankins was in violation of our laws by misrepresenting to the family and secondly in violation of the goods and service rule. However, it does appear Mr. Campbell was given a copy of the statement the morning following the arrangements. Mr. Hankins further explained, that part of the reason the statement of goods and services was not provided at the time of arrangements was because the family had only a short period of time to get from the funeral home to the cemetery to meet with them about the grave space. The Board determined there was not any violation of our laws that the death certificate dispute was a civil matter between the two parties. Motion made by Brazzel to dismiss the complaint for no violations, seconded by Adams, all in favor. Motion carried.

6. Board Discussion

- a. **Inspector updates and reports** – Ms. Stokes explained she was the inspector in training during the month of June with Mr. Heath. They visited Clay Funeral home for a location change Mr. Heath approved the new location and River Valley Cremations Association was also granted a license per Mr. Heath's advisement. Ms. Stokes did her first solo inspection on July 1, 2014 in Kensett for Sullivan Family Funeral Care. He met all standards and recommended to the Board that the license should be granted. Ms. Stokes further stated she has inspected thirty-five (35) establishments so far and has covered the following counties: Independence, Jackson, White, Woodruff, Prairie, Monroe and all but one establishment in Lonoke County. She has also reviewed and documented numerous apprentice case reports. Ms. Stokes also made the initial first inspection on July 18, 2014 for P & K Mortuary, Inc. in Little Rock. Mr. A. C. Shelton is the manager and owner; the establishment met all requirements for licensure. Mr. Burns inquired about the River Valley Cremations Association. Ms. Stokes explained they were opening up a Type A establishment, so that they could deal directly with the public. She also went to two public hearings in Blytheville and Manila.
- b. **Public Hearings** – Chairman Woodard inquired of the Board's attorney that the point of these hearings were for the Board to listen to the public comment from both sides and not to be there to answer questions or to be expert witnesses. Mr. Ohrenberger confirmed that was correct. It shall be the responsibility of the applicant to provide any expert witnesses. Then after the Board hears both sides the Board will meet to make a determination.

- 7. **Rules Committee Update** – Executive Secretary explained the committee met on July 9th and discussed several of the proposed changes thoroughly. That the committee would need to meet on at least a few more occasions. Also, felt we had made some significant progress. The Board discussed that we need to have a

meeting that is not back to back with a regular board meeting. Executive Secretary explained the next one will be in August and not held in conjunction with a regular meeting.

8. **Attorney Updates – Mark Ohrenberger**

- a. ***In the Matter of: Javier Buck and Richardson Memorial Funeral Home*** – This Board had a hearing on Mr. Buck several months ago where the Board suspended his license and fined the establishment. Mr. Buck has filed an appeal through his attorney Ms. Sheila Campbell in Pulaski County. At the May meeting the Board agreed to stay the suspension while the appeal was on going. The Board's obligation after one of these appeals is received is that within thirty (30) days we have to prepare a copy of the entire administrative record, file it with the circuit court, and at that time we file a response. We did that, but we will have to file an amended response to include the stay agreement. We are waiting on the court to set a briefing schedule. The court will review the administrative record, receive briefs, and may hear oral arguments.
- b. ***In the Matter of: Effie Collins and Collins Chapel*** – Mr. Ohrenberger stated that the Board should recall that Ms. Collins had a claim filed against the Board with the State Claims Commission. Claims Commission denied her claim and she appealed it to the Claims Review Subcommittee of the Legislative Council. The legislature gets to decide these matters. Mr. Ohrenberger was at their last meeting on July 8th on another matter and the Collins matter had been scratched off the docket. Mr. Hodge the Director from the Claims Commission stated, he received a call late Monday from Mr. Steele that since there had been another hearing before this Board that there was going to be an appeal or had been appeal. Mr. Ohrenberger stated he contacted the courts in Pulaski and Mississippi County, but did not find a record of an appeal being filed. Board members at their public hearing in Blytheville was informed that Ms. Collins is still having funerals and has had one since the last hearing.

9. **Meeting dates:**

- a. July 15, 2014 -12PM - Public Hearing – Mountain Home crematory permit application
- b. July 29, 2014 - 1PM – Public Hearing – Russellville crematory permit application
- c. September 4, 2014 – 9AM
- d. November 13, 2014 – 9AM

10. **Adjournment**

Motion made by Adams to adjourn to meeting, seconded by Brazzel, all in favor. Motion carried.